80-1223

Supreme Court, U.S.
FILED
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IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1980
No. _____

TOMMY LEE JONES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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INDEX

Page

Table of Authorities ii

Questions iv

OPINIONS BELOW 1

JURISDICTION 1

STATUTES 2

STATEMENT OF THE CASE 4

REASONS FOR GRANTING WRIT 7

CONCLUSION 15

APPENDIX A

Opinion 5th Circuit 16

APPENDIX B

Petition for Rehearing 19

APPENDIX C

Reporter's Transcript 21

APPENDIX D

Defendant's Requested Instruction 24

APPENDIX E

Reporter's Transcript of Proceedings 26

PROOF OF SERVICE 27

TABLE OF AUTHORITIES

Case	Page
Dennis v. United States 341 U.S. 494, 500	8
Eatman v. State (1904) 48 Fla. 21, 29,37 So. 576, 579	12
Garner v. United States (1976) 424 U.S. 648	11, 14
Morningstar v. State (1876) 55 Ala. 148, 149	12
Murphy v. Waterfront Commission (1964) 378 U.S. 52	11
Rank v. Commonwealth (1917) 176 Ky. 343, 353, 195 S.W. 802, 808	9
State v. Boyett (1849) 32 N.C. 336, 343	8
United States v. Murdock (1931) 284 U.S. 141	11

United States v. Murdock (1933)
290 U.S 389 ..... 7, 11, 14, 15

United States v. One Buick Coach Automobile
34 F.2d 318 (7th Cir., 1929) 9

Statutes **Page**

18 U.S.C.
Section 1341 ..... X, 2, 4
Section 3231 4

26 U.S.C.
Section 7203 ..... X, X, 2, 3, 4, 13
Section 7205 ..... X, X, 2, 3, 4, 13

28 U.S.C.
Section 1254 (1) 1

Texts **Page**

4 W. Blackstone
Commentaries 27 8

Holmes, The Common Law
47-8 (1881) 8

R. Perkins, Perkins On Criminal Law,
Second Edition (1969)
p. 931 10
p. 936-7 12

IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1980
No. _____

TOMMY LEE JONES,

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vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

QUESTIONS PRESENTED

1. Whether "mistake of law," tending to disprove an "intent to defraud," is a valid defense in a felony mail fraud prosecution (18 U.S.C. Sec 1341), where the mistake pertained to the defendant's understanding of the tax laws, which formed the factual basis of the mail fraud prosecution. (The defendant was charged in the same indictment with failure to file tax returns, and with filing false wage withholding statements with his employers (26 U.S.C. Secs.7203 and 7205, respectively), misdemeanors

which require "willfullness," but do not require an "intent to defraud.")

2. Whether "mistake of law," tending to disprove "willfullness," is a valid defense in prosecutions for (1) failure to file tax returns, and, (2) filing false wage withholding statements with the defendant's employers (26 U.S.C. Secs. 7203 and 7205, respectively), and further, whether "mistake of law" includes mistake or misapprehension of constitutional law as well as statutory and decisional law.

TOMMY LEE JONES, petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled action on October 15, 1980, a petition for rehearing having been denied on November 18,1980. (There are no parties to this proceeding other than those named in the caption).

OPINIONS BELOW

The opinion of the court below, affirming petitioner's at 628 F.2d 402 (5th Cir., 1980). The denial of the petition for rehearing is not reported, and is reproduced at Appendix B.

JURISDICTION

The opinion of the court below affirming petitioner's conviction (App A) was entered on October 15, 1980. A timely petition for rehearing (App. B) was denied on November 18, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

STATUTES DRAWN IN QUESTION

18 U.S.C. §1341
Frauds and swindles

Whoever, having devised or intended to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

As amended Aug. 12, 1970, Pub.L. 91-375, § 6(j) (11), 84 Stat. 778.

26 U.S.C. § 7205. Fradulent withholding exemption certificate or failure to supply information.

Any individual required to supply information to his

employer under section 3402 who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in lieu of any other penalty provided by law (except the penalty provided by section 6682), upon conviction thereof, be fined not more than $500, or imprisioned not more than 1 year, or both. Aug 16, 1954, c. 736, 68A Stat. 852; Mar. 15, 1966, Pub.L. 89-368, Title I, § 101(e) (5), 80 Stat. 62.

26 U.S.C. § 7203. Willful failure to file return, supply information, or pay tax.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution. Aug. 16, 1954, c. 736, 68A Stat. 851.

STATEMENT OF THE CASE

Petitioner was indicted on 3 counts of filing false wage withholding statements with his employers, 1 count of failing to file a tax return, and 2 counts of mail fraud. (26 U.S.C. Sec. 7205, 26 U.S.C. Sec. 7203, and 18 U.S.C. Sec. 1341, respectively.) The district court had jurisdiction over the action under 18 U.S.C. § 3231.

The theory of the prosecution was that Jones wrongfully filed Forms W-4 with his employer claiming that he was exempt from withholding taxes, that he then failed to file "real" tax returns, and that the documents he did file, which consisted of some 32 pages of "political" literature attached to a Form 1040 upon which constitutional objections were stated, was mailed to IRS with the intent to defraud the government of taxes, since nothing was stated on the 1040's which revealed his income or tax liability, and he had previously ceased withholding.

The theory of the defense was that Jones was mistaken as to the requirements of the tax laws. Therefore, he believed, he did not "willfully" file W-4's with his employers, or "willfully" fail to file tax returns. And, more crucially, he did not have an "intent to defraud" the government throughout any part of these transactions, in which use of the mails was alleged.

At his jury trial, Jones offered four witnesses to testify as to the instructions they had given him on the tax laws. A question-and-answer offer of proof was held, out of the

jury's presence, after which the trial court ruled that the testimony was irrelevant and must be excluded. The court noted that some, but not all, of the instruction was as to the unconstitutionality of certain laws in which, in the court's view, even a good faith belief would not be a defense. Further, he noted that none of the witnesses were tax attorneys, to which Jones had supplied his books and records. The Court's ruling applied with respect to all of the mental states that were in issue, "willfulness" as to the misdemeanor tax counts, and "intent to defraud", alleged in the felony mail fraud counts. The court's oral ruling is at Appendix C.

The defendant requested jury instructions setting forth his theory of the defense — that he did not "willfully" violate the tax laws, and that the alleged "intent to defraud" was negated by a good faith belief that his behavior was legally proper. The instructions are at Appendix D. His requested instructions, even to mail fraud, were not given and the court did not give other instructions which could have apprised the jury of Jones' defense. The court instructed the jury as set forth in Appendix E.

The jury found Jones guilty on all counts. He was sentenced to four years imprisonment, concurrent, as to each of the two mail fraud counts, 1 year imprisonment, concurrent, and concurrent with the mail fraud sentences, as to each of the three "false wage withholding statement" counts, and sentence was suspended as to the one "failure to file" count, with five years probation. He was also to pay

a $5,000 fine as a special condition of probation.

Jones made a motion for a new trial, and gave as grounds those objections just noted. That motion was denied.

Jones then appealed, raising those issues, as well as several others. The Court of Appeal for the Fifth Circuit entered its decision on October 15, 1980, affirming the conviction as to all counts, but **holding** only that a good faith belief in the unconstitutionality of the Federal Reserve System did not constitute a defense to willful failure to file tax returns. As to the remaining issues, including his contentions as to mail fraud, the Court stated that "[t]hey are relatively standard for appeals of this genre, are without merit, and do not require discussion." The court had denied oral argument in this case.

Jones, feeling that the court had inadvertently overlooked the most crucial issue in his appeal, petitioned for rehearing. He also noted that the evidence did not show that his good faith beliefs were limited to the unconstitutionality of the Federal Reserve System, but included positive beliefs concerning proper interpretation of the laws as they stood. The petition for rehearing was denied, without further comment from the Court of Appeals, whereupon this petition for writ of certiorari was prepared. Mr. Jones' aggregated four-year sentence has not been stayed pending action on the petition.

REASONS FOR GRANTING THE WRIT

1. The opinion of the Court of Appeals, holding that petitioner's "mistake of law" defense to mail fraud is "without merit," is an incorrect account of a well-known general legal principle, and is in conflict with the decision of this Court in **United States v. Murdock,** 290 U.S. 389 (1933).

The Court of Appeals noted, as to Mr. Jones' beliefs "[w]e may sympathize with, we may even admire, a citizens defiance of a law that he believes to be unjust and unconstitutional. We may follow with interest, even with hope, his efforts to have that law so declared. But we need not even listen to his contention that he has passed sincere, private judgment upon it as invalid and hence is exempt from its sanctions." **Jones, supra.** This was the court's rationale for finding that such good faith beliefs simply are not a defense to the misdemeanor of "willful" failure to file returns. No rational was given at all however, for the court's holding that such beliefs cannot negate a felonious "intent to defraud", or that the contention was "without merit".

With all due respect, it is nonetheless remarkable that a question such as this must be raised at such a late date in our jurisprudence. The law on this subject is, by now, strictly "hornbook" law, as an examination of the commentators and cases shows. "The existence of a **mens rea** is the rule of, rather than the exception to, the principles of

Anglo-American criminal jurisprudence." **Dennis v. United States,** 341 U.S. 494, 500.

It must be remembered that Mr. Jones did not claim to be mistaken as to whether it is against the law to use the mails with an "intent to defraud". His evidence would have shown, rather, that he was mistaken only as to his duty to permit tax to be withheld from his wages, and as to the form of tax return that was required of him. If indeed he was mistaken, as he wished to prove, and have the jury thus instructed, then he would not necessarily have had a felonious "intent to defraud" — even if the Court of Appeals' view as to "willful failure to file" is correct.

Every lawyer is familiar, in one form or another, with the maxim **"ignorantia legis neminem excusat,"** or "ignorance of the law excuses no man." **State v. Boyett,** 32 N.C. 336, 343, (1849). See also, Holmes, **The Common Law,** 47-8 (1881). Blackstone, in the **Commentaries,** puts it in a way which more accurately points out its purpose: **"Ignorantia juris, quod quisque tenetur scire, neminem excusat,"** or "ignorance of the law, which every man is bound to know, excuses no man." 4 W. Blackstone, **Commentaries** *27. The presumption of knowledge is founded upon sound social policy, otherwise the defense of ignorance, if always available, would encourage ignorance; the criminal law would lose its deterrent effect.

The maxim does not apply, however, where specific intent is an element of the crime to be proven, **United**

States v. One Buick Coach Automobile, 34 F.2d 318 (7th Cir., 1929) and where mistake or ignorance of the law negatives the existence of such intent.

A noted modern commentator states:

> "Certain offenses are not committed unless the prohibited deed is done fraudulently * * * As fradulently means an 'intent to defraud', there is here a requirement of a special attitude of mind in the nature of an 'intent' in the true sense of the word. And a mistake of law may be of such a nature as to indicate that a certain deed was not done **fraudulently,** although this element would have been present had the same thing been done without such mistake. Even one who obtains money or chattels from another by willful misrepresentations is not guilty of the crime of obtaining money by false pretenses if he honestly believes he is entitled to exactly what he gets, although a misunderstanding of the law may be the basis of his erroneous notion. [footnote: **Rank v. Commonwealth,** 176 Ky. 343, 353, 195 S.W. 802, 808, (1917)]. Such a one is not entirely above reproach because he intentionally makes false statements to influence the action of another. But his conduct is not fraudulent because he seeks only to have that done which he sincerely believes should be done. In a different type of offense his mistake of law might result in

conduct, actually improper, but performed in the utmost good faith in every sense of the word. It would be an obvious contradiction in terms to speak of such conduct as 'fraudulent.' " R. Perkins, **Perkins on Criminal Law,** p. 931, Second Edition (1969).

Here, the trial court instructed the jury thus:

"You are instructed that a good faith belief that the Federal Reserve System is unconstitutional or the belief that Federal Reserve Notes are not money or legal tender in this country is not a legal defense in this case. It is within the power of Congress to enact laws relating to the Federal Reserve System and the use of Federal Reserve Notes as legal tender.

"A person is not free to disobey the laws of this country because he believes the Federal Reserve System, or the income tax laws, or some other law is unconstitutional. You may not treat such beliefs as possible negation of criminal intent." (Reporter's transcript of proceedings, December 20, 1979, p. 52, Appendix E.)

This simply is not the law with respect to an "intent to defraud." Appropriate objections were made. The court should instead have given the defendant's requested instructions numbers 4 and 6, reproduced in Appendix D.

The problem naturally arises as to which law is mistaken or unknown by the defendant. Mr. Jones did not claim that

he did not know that it was against the law to use the mails with an intent to defraud. He claimed rather, that he sincerely believed for various reasons that he was entitled to file an "exempt" wage withholding statement with his employer, and to mail IRS a tax return with constitutional objections stated on it, instead of the usual information, based partly upon his understanding of this Court's Opinion in **Garner v. United States,** 424 U.S. 648 (1976). It was this variety misunderstanding that the district court found to be irrelevant as to the "intent to defraud."

This Court settled the same question several decades ago. Prior to **United States v. Murdock,** 284 U.S. 141 (1931), it was not definitely decided that a person under examination in a federal tribunal could not refuse to answer a question on account of probable self-incrimination under state law. (This point was later over-ruled in **Murphy v. Waterfront Commission,** 378 U.S. 52 (1964).) However, prior to the first **Murdock** decision, the defendant, Mr. Murdock, had refused to give testimony as to his tax deductions out of fear of incrimination under state law. After the decision, he was indicted for "willfully" failing to supply that information. This Court reversed his conviction, holding that the failure to do what was required was not "willful" if it was due to a good faith misunderstanding of law. **United States v. Murdock,** 290 U.S. 389 (1933). Certainly, the familial relation between "willfullness" and "intent to defraud" is instruc-

tive enough to illustrate what happened to Mr. Jones in the lower courts.

While a court may regard beliefs such as those that Mr. Jones wished to have considered to be "unreasonable," that is not a matter which can mitigate his right to put on this defense. Reasonableness should not be the sole issue when the central question is whether one has a "specific intent." Professor Perkins, whose thorough treatise is quoted extensively above, also states:

> "If the offense charged is one requiring a specific intent in the true sense of intention, guilt may be disproved by an honest belief inconsistent with such an intent, even if the belief result from a mistake of law not based upon reasonable grounds. [footnote omitted] In other words, a belief may be very sincere although not very reasonable. Hence one who carries away the chattel of another in the honest belief of a lawful right to do so is not guilty of larceny, even if the ground for his belief is 'weak'; [footnote: **Morningstar v. State,** 55 Ala. 148, 149 (1876)] and one who appropriates money which he had collected for another is not guilty of embezzlement 'however mistaken . . . or ill founded his claim of right might in fact be, if he honestly entertained such a belief.' [footnote: **Eatman v. State,** 48 Fla. 21, 29, 37 So. 576, 579 (1904)] . . ." R. Perkins, **Perkins on Criminal Law,** pp. 936-7, Second Edition (1969).

Perkins goes on to note, however, that the jury is not bound to believe the defense, and that the unreasonableness of the position taken might lead them to the

conclusion that it is a "pretext." This does not mean, however, that the trial court can exclude the evidence as irrelevant.

In summary, the Court of Appeals noted that it may "sympathize with... even admire" Mr. Jones' actions, that it may "follow with interest, even with hope", his efforts to have the tax laws declared unconstitutional. This view is completely inconsistent with the court's finding that Mr. Jones did not have a possible defense to mail fraud, and the judgment of the Court of Appeals for the Fifth Circuit should, accordingly, be reversed.

2. The other ground upon which this petition is urged is that which is raised in the published opinion of the Court of Appeals. The court there held that a good faith belief in the unconstitutionality of the Federal Reserve System is not a legal defense to willful failure to file tax returns, or to the willful filing of a false wage withholding statement with one's employer. (26 U.S. Secs. 7203 and 7205 respectively.)

The petitioner has consistently taken the view, in the district court and in the appellate court, that the principles noted above as to the "mistake of law" defense should apply to an offense requiring "willfullness" in the same manner as that requiring an "intent to defraud." Each state of mind requires a "specific intent." However, admittedly, the two tax statutes are (1) misdemeanors, as distinguished from felony mail fraud, and (2) while an "intent to defraud" is undoubtedly a specie of the genus "willfullness," the reverse is certainly not true.

Nonetheless, even a good faith belief that certain laws are unconstitutional implies that the subject believes that the Constitution is law. The finer procedural points by which a law is found to be unconstitutional escape the layman, and become additional misapprehensions of the law for such a person.

The petitioner therefore urges that this Court's decision in **United States v. Murdock,** 290 U.S. 389 (1933), supra, encompasses this problem as well. Further, the petitioner in **Murdock** was himself mistaken as to the ambit of a constitutional provision, namely, the Fifth Amendment. It was that very mistake of law that excused his acts.

Further, the notion that this petitioner acted purely because he believed that certain laws were unconstitutional is not entirely true. The four excluded witnesses would also have testified concerning positive features of the tax laws, and Mr. Jones' right to use the Fifth Amendment on his tax returns, a matter which this Court resolved in **Garner v. United States,** 424 U.S. 648 (1976), and which the petitioner also misunderstood.

For the foregoing reasons, as well as those set forth above with respect to the first question presented for review, which are incorporated here, it is respectfully submitted that this Court should grant the petition for writ of certiorari, and reverse the judgment of the Court of Appeals for the Fifth Circuit.

CONCLUSION

This case presents the Court with an opportunity to consider the entire breadth of the good-faith "mistake of law" defense, because of the variety of offenses in which the petitioner was forbidden to make this defense. Admittedly, the law is more solidly decided in petitioner's favor as to the mail fraud counts, requiring "intent to defraud," but considering this Court's decision in the second **Murdock** case, supra, that rationale, and therefore that defense, should apply equally in a case where "willfullness" must be proven, as is the case in the two tax misdemeanors charged.

Accordingly, it is respectfully submitted that this Court should grant the writ of certiorari as to both questions, and should reverse the judgment of the Court of Appeals for the Fifth Circuit.

Dated: January 16, 1981

Respectfully submitted,

CLYDE R. MAXWELL
Counsel for Petitioner

APPENDIX "A"

UNITED STATES V. JONES

UNITED STATES of America,

Plaintiff-Appellee,

v.

Tommy Lee JONES,

Defendant-Appellant.

No. 80-1139
Summary Calendar.

United States Court of Appeals,
Fifth Circuit
Unit A

Oct. 15, 1980.

Defendant was convicted in the United States District Court for the Southern District of Texas, Carl O. Blue, Jr., J., of mail fraud, supplying false information to his employer, and failure to file a tax return. The Court of Appeals, Gee, Circuit Judge, held that good-faith belief in unconstitutionality of Federal Reserve System did not constitute legal defense to willful failure to file income tax return.

Affirmed.

Internal Revenue - 2406

Good-faith belief in unconstitutionality of Federal Reserve System did not constitute legal defense to willful failure to file income tax return.

Appeal from the United States District Court for the Southern District of Texas.

Before GEE, RUBIN, and RANDALL, Circuit Judges.

GEE, Circuit Judge:

Jones a tax protester, appeals to us his convictions of mail fraud, of supplying false information to his employer, and of failure to file a tax return.

The argument given most prominence in his briefing is that the trial court erred in refusing to admit certain testimony tending to support one of his defensive contentions. This contention was that he believed in good faith that the Federal Reserve System is unconstitutional, that its notes are not "money," and hence that he had received no income subject to taxation. He complains also that the court's refusal to charge the jury on this "defense" was error since some of the evidence that was admitted-including extensive testimony by Jones himself—went to that issue.

We have heretofore squarely held that a good-faith belief in the unconstitutionality of the Federal Reserve

System does not constitute a legal defense to willful failure to file an income tax return. **United States v. Benson,** 592 F.2d 257 (5th Cir. 1979) These laws, like all others, must be obeyed by the citizen unless and until they are **held** unconstitutional. Jones does not claim insanity, ignorance of the existence of the taxing system, or action in reliance on competent tax counsellors who were themselves fully advised. He simply asserts that his layman's opinion and belief, derived from his readings and from attendance at various lectures on the subject, insulates him from criminal responsibility by negating the willfulness requisite to proof of specific intent on his part to violate the law.

It will not do. We may sympathize with, we may even admire, a citizen's defiance of law that he believes to be unjust and unconstitutional. We may follow with interest, even with hope, his efforts to have that law so declared. But we need not even listen to his contention that he has passed sincere, private judgment upon it as invalid and hence is exempt from its sanctions.[1]

We have reviewed Jones's other contentions with care. They are relatively standard for appeals of this genre, are without merit, and do not require discussion.

AFFIRMED.

1. It follows that his evidence to this effect was not admissible.

Adm. Office, U.S. Courts—West Publishing Company, Saint Paul, Minn.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
NOV 18, 1980
GILBERT F. GANUCHEAU
Clerk

NO. 80-1139

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TOMMY LEE JONES,

Defendant-Appellant.

- - - - -

Appeal from the United States District Court for the Southern District of Texas

- - - - -

ON PETITION FOR REHEARING

(November 18, 1980)

Before GEE, RUBIN and RANDALL, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/

United States Circuit Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	)	
	)	
VS.	)	**CRIMINAL**
	)	**NO. H-79-116**
TOMMY LEE JONES	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS,
DECEMBER 18, 1979, pp. 95-99

THE COURT: All right. The Court over the noon recess, of course, has had an opportunity to review the testimony of three of the four witnesses, and the fourth witness, Mr. Izen, has testified subsequent to the noon recess, and the Court sees no basis to alter its views on the basis of the totality of the testimony.

The Court will issue this ruling: The defendant seeks to present to the jury the testimony of several lecturers and members of a tax protest movement concerning the substance of their lecturers and writings. Defendant offers this testimony to corroborate his own testimony relative to his lack of willfulness, which is necessary to sustain a conviction under all counts charged in the indictment.

After careful consideration of the testimony of Byron Foote, Don Overstreet, David Martin, and Joe Izen, the Court concludes that testimony of this nature must be excluded.

The law is well settled that as a defense to the element of willfulness a defendant may offer proof of his good-faith reliance on the advice of competent tax counsel or a qualified accountant to whom the defendant has given all the facts relative to his own tax situation. **United States vs. Bursten,** 395 F.2d 976, Fifth Circuit 1968. It is clear from the testimony of these witnesses that defendant received no specific advice relative to his own tax situation. Furthermore, none of the witnesses was a qualified, licensed tax attorney or accountant at the time Defendant Jones heard their lectures.

Finally, from the testimony of Byron Foote and David Martin, it is apparent that participants at these tax seminars are actually cautioned that they may face exposure to criminal prosecution if they followed the methods prescribed by the lecturers. Thus, since the testimony of none of these witnesses establishes the requisite elements pursuant to **Bursten,** that is, reliance on the advice of a qualified attorney or accountant to whom the taxpayer has made full disclosure, their testimony is not relative to any valid defense of Defendant Jones.

Further, certain of the witnesses testified that the basis of the movement, which offers lectures entitled "How to

Avoid Taxes Legally," is their belief in the invalidity of the federal reserve, monetary and income tax systems. Thus, central to reliance on the methods of filing prescribed by this group is acceptance of the basic premise of their movement. However, the Fifth Circuit Court of Appeals has held that even a good-faith belief in the invalidity of the federal reserve system is not a defense to the element of willfulness. **United States v. Benson,** 592 F.2d 257, Fifth Circuit 1979. Nor is a belief in the validity of the Sixteenth Amendment a defense to the element of willfulness. See **United States vs. Arlt, A-r-l-t,** 567 F.2d 1295, Fifth Circuit 1978.

Accordingly, for the reasons set forth herein, this testimony must be excluded because of its immateriality to any valid defense of Defendant Jones in this action.

That will be the ruling of the Court.

Now, are we ready to proceed with your case, Mr. Maxwell?

MR MAXWELL: Well, Your Honor, one or two matters. First of all, of course, based on the Court's ruling, I move for a mistrial, based on the fact that this is a denial of a fair trial and due process of law.

THE COURT: Very well, that will be denied.

APPENDIX D

DEFENDANT'S REQUESTED INSTRUCTION NO. 4

The tax return mailed need not itself disclose any intent to defraud, nor show on its tact that it was mailed in furtherance of a scheme to defraud. But it is necessary that the evidence in the case establish beyond a reasonable doubt that the return was willfully mailed, or caused to be mailed, by the accused, with the intent to help carry out some essential step in the execution of the scheme to defraud the United States as alleged in the indictment.

To act with "intent to defraud" means to act, knowingly and with the specific intent to deceive, ordinarily for the purpose of either causing some financial loss to another, or bringing about some financial gain to one's self.

However, an act is not with "intent to defraud" if it is done pursuant to a good faith belief that one's actions are in conformity with the law, or where the act consists of a good faith exercise of what one believes to be his rights under the law.

DEFENDANT'S REQUESTED INSTRUCTION NO. 6

If the evidence in the case leaves you with a reasonable doubt whether the accused in good faith believed the tax return to be in compliance with the law at the time it was mailed, then you should find him not guilty of the offense of mail fraud.

DEFENDANT'S REQUESTED INSTRUCTION NO. 9

You may consider on the question of good faith and willfulness, defendant's reliance on his constitutional rights, his readings on the subject, his attendance at meetings discussing the subject and the advice of others that he received.

DEFENDANT'S REQUESTED INSTRUCTION NO. 24

If you find that the defendant relied upon the advice of others to file his income tax return for the year 1977 and prepared and filed a return for that year which he thought would meet the requirements of the Internal Revenue Laws, then you must acquit the defendant as to the offense of willful failure to file a return.

DEFENDANT'S REQUESTED INSTRUCTION NO. 25

As to the §7203 violation, you may consider on the question of good faith and willfulness, defendant's reliance on his constitutional rights, his readings on the subject, his attendance at meetings discussing the subject and the advice of others, who appeared to be learned in the law, that he received.

DEFENDANT'S REQUESTED INSTRUCTION NO. 30

The defendant cannot be convicted for an erroneous claim of privilege asserted in good faith.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	**CRIMINAL**
	)	**NO. H-79-116**
TOMMY LEE JONES	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS,
DECEMBER 20, 1978, p. 52

THE COURT:

You are instructed that a good faith belief that the Federal Reserve System is unconstitutional or the belief that Federal Reserve Notes are not money or legal tender in this country is not a legal defense in this case. It is within the power of Congress to enact laws relating to the Federal Reserve System and the use of Federal Reserve Notes as legal tender.

A person is not free to disobey the laws of this country because he believes the Federal Reserve System, or the income tax laws, or some other law is unconstitutional. You may not treat such beliefs as a possible negation of criminal intent.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 612 N. Bush Street, Santa Ana, California 92701.

On January 16, 1981, I served the within Petition for Writ of Certiorari on the interested parties in said action, by placing a true copy in each of two (2) sealed envelopes, with postage thereon fully prepaid, in the United States mail at Santa Ana, California, addressed as follows:

WADE McCREE
Solicitor General
Department of Justice
Washington, D.C. 20530

U.S. ATTORNEY
JAMES L. POWERS
Assistant U.S. Attorney
U.S. Courthouse
515 Rusk
Houston, TX 77061

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED on January 16, 1981, at Santa Ana, California.

Jack Gallagher